

### **REMARKS/ARGUMENTS**

#### **Telephonic Interview of April 18, 2008**

Applicants respectfully acknowledge the time and courtesy extended by Examiner Stephen Kapushoc to their undersigned representative, David M. Saravitz, in the telephonic interview on April 18, 2008. Examiner Kapushoc and Applicants' undersigned representative participated in the interview which was initiated by Applicants' undersigned representative to discuss the recently issued Advisory Action.

During the brief telephonic interview, Examiner Kapushoc confirmed that he did not consider the amended claims and arguments presented by Applicants in their Amendment after Final filed March 20, 2008 because, as stated in the Advisory Action, Applicants presented a greater number of new claims than the number of finally rejected claim that had been cancelled. Examiner Kapushoc expressed his willingness to consider such claim amendments and arguments in a subsequently filed Amendment after Final, if in such an Amendment after Final, the number of new claims did not exceed the number of cancelled, finally rejected claims. Applicants representative indicated that, pending the approval of his client, he expected to submit in the next few days a second Amendment after Final that is essentially identical as the one submitted on March 20, 2008 but with the number of new claims not exceeding the number of cancelled, finally rejected claims.

#### **Status of the Claims**

Applicants respectfully acknowledge that the Examiner has allowed claims 20-22 and 24.

Claims 7, 15-19, 23, and 29 have been cancelled in the interest of furthering prosecution of the instant application and not to limit the scope of Applicants' claimed invention. Applicants expressly reserve the right to file one or more continuing applications to protect the subject matter of the cancelled claims.

Claims 1, 6, 9, and 30 have been amended.

Claims 1, 6, and 9 have been amended as recommended by the Examiner to point out more distinctly in step (c) that detecting the PCR product indicates the presence of a mutant allele of a wheat *AHASL* gene. This amendment is fully supported by the original claims and specification.

Claims 1 and 30 have been amended without prejudice or disclaimer to add the recitation "wherein said mutant-allele-specific primer comprises the nucleotide sequence set forth in SEQ ID NO: 3". Support for this amendment can be found in the original claims, particularly original claims 7, 21, 32, and 34, and in the specification.

Claims 42-75, which were submitted in the Amendment after Final filed March 20, 2008, stand not entered.

New dependent claims 76-82 have been added. These claims are identical to non-entered claims 46-49 and 52-54. Support for the new claims can be found in the original claims, particularly original claims 4, 5, 7, 14, 18, 19, 21, and 29, and in the specification.

No new matter has been added by way of amendment of the claims or by the addition of the new claims.

Claims 1-6, 8, 9, 14, 20-22, 24, 30, 31, and 76-82 are pending.

Reexamination and reconsideration of the application as amended are respectfully requested. In any event, the Examiner is respectfully requested to enter the above amendments for the purpose of furthering prosecution.

The Rejection of the Claims under 35 U.S.C. §112, Second Paragraph, Should Be Withdrawn

Claims 1-9 and 14 have been rejected under 35 U.S.C. §112, second paragraph, for indefiniteness. Claim 7 has been cancelled. Claims 1, 6, and 9 have been amended. New claims 76-82 have been added. This rejection is respectfully traversed and should not be applied to the newly submitted claims.

The Examiner has indicated that claims 1-9 and 14 are unclear because while the preamble states "method for detecting a mutant allele", there is not a step in which any mutant allele is detected. The Examiner has suggested amending claims 1, 6, and 9 to include "wherein detecting said PCR product indicates the presence of a mutant allele of a wheat *AHASL* gene."

Although Applicants respectfully disagree with the position of the Examiner that claims 1-9 and 14 are indefinite, Applicants have amended claims 1, 6, and 9 as recommended by the Examiner in the interest of furthering prosecution of instant application and not to limit scope of their claimed invention. Accordingly, claims 1-6, 8, 9, and 14 are not indefinite.

In view of the amendments and the above remarks, it is submitted that the rejection of the claims under 35 U.S.C. § 112, second paragraph, should be withdrawn and not applied to the newly submitted claims.

#### The Rejection of the Claims under 35 U.S.C. §103(a) Should Be Withdrawn

Claims 1-5, 8, 14-19, 23, and 29-31 remain rejected under 35 U.S.C. § 103(a). Claims 15-19, 23, and 29 have been cancelled. Claims 1 and 30 have been amended. New claims 76-82 have been added. This rejection is respectfully traversed.

In particular, claims 1, 8, 14, 15, 23 and 29 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hucl *et al.* (WO 2003/014357) in view of Liu *et al.* (1997, *Genome Res.* 7:389-398) and Kwok *et al.* (1990, *Nucl. Acids Res.* 18:999-1005). Claims 2, 4, 5, 16, 18, 19, and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hucl *et al.* in view of Liu *et al.* and Kwok *et al.* and in further view of Stanton (2002, US Patent No. 6,475,736). Claims 3, 17, and 31 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hucl *et al.* in view of Liu *et al.* and Kwok *et al.* and Stanton and in further view of Werle *et al.* (1994, *Nucl. Acids Res.* 20:4354-4355).

Although Applicants continue to believe that the claims are not obvious in view of any one of the cited combinations of references for the reasons of record stated in their prior responses to the Office, Applicants have cancelled claims 15-19, 23, and 29 and have amended

independent claims 1 and 30 to be directed to subject matter that the Examiner has indicated is neither anticipated nor obvious. In particular, Applicants have amended claim 1 to incorporate the limitation of claim 7 that the mutant-allele-specific primer comprises the nucleotide sequence set forth in SEQ ID NO: 3. Similarly, Applicants have amended claim 30 to recite the limitation of allowed claim 21 that the mutant-allele-specific primer comprises the nucleotide sequence set forth in SEQ ID NO: 3. Accordingly, Applicants submit that the amended claims are not obvious in view of any of the cited combinations of references.

In addition, Applicants have added new dependent claims 76-82. These new dependent claims are based on original dependent claims 4, 5, 7, 14, 18, 19, 21, and 29. Because each of these new dependent claims is entirely within the scope of the independent claim from which it depends, Applicants submit that the new claims are not obvious in view of any of the cited combinations of references.

Applicants have amended the instant application without prejudice or disclaimer as described hereinabove in the interest of furthering prosecution of the instant application and not to limit the scope of their claimed invention. Applicants expressly reserve the right not only to file one or more continuing applications directed to embodiments of their invention not encompassed by the present claims, but also to address any claim rejection in such a continuing application that is the same or similar to a claim rejection raised by the Office in the instant application.

In view of the amendments and the above remarks, it is submitted that the rejection of the claims under 35 U.S.C. § 103(a) should be withdrawn.

### **CONCLUSION**

In view of the above amendments and remarks, Applicants submit that the objections to the claims and the rejections under 35 U.S.C. §§ 103 and 112, second paragraph, are overcome. Applicants respectfully submit that this application is now in condition for allowance. Early

Appl. No.: 10/805,973  
Amdt. dated 04/23/2008  
Reply to Office Action of November 21, 2007

notice to this effect is solicited. In any event, the Examiner is respectfully requested to enter the above amendments for the purpose of furthering prosecution.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON April 23, 2008.